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PATENT
Dkt. No. OKC00705

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of: **David M. Prokop**

Application No.: 10/822,286

Group No.: 3676

Filed: April 12, 2004

Examiner: Mark A. Williams

For: **ERGONOMIC HANDLE WITH THUMB SUPPORT AND A TOOL PROVIDED THEREWITH**

JAN 03 2007

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION-37 C.F.R. § 41.37)

1. Transmitted herewith, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on September 22, 2006 and the Notice of Panel Decision from Pre-Appeal Brief Review mailed November 3, 2006.
2. STATUS OF APPLICANT

This application is on behalf of a small entity. A statement was already filed.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:

Appeal Brief fee due for a small entity

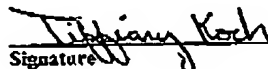
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CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a)

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4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant petitions for an extension of time under 37 C.F.R. § 1.136 (fees: 37 C.F.R. § 1.17(a)(1)-(5)) for one month:

Fee: \$60.00

If an additional extension of time is required, please consider this a petition therefor.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee	\$250.00
Extension fee (if any)	\$60.00
TOTAL FEE DUE	\$310.00

6. FEE PAYMENT

Authorization is hereby made to charge the amount of \$310.00 to Credit card as shown on the attached credit card information authorization form PTO-2038.

Respectfully submitted,

Date:

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PATENT
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THEREWITHMail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

Sir:

APPELLANT'S BRIEF

This Brief is in furtherance of the Notice of Appeal that was filed in this case on September 22, 2006. The required fees, any required petition for extension of time for filing this Brief, and the authority and time limits established by the Notice of Appeal are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

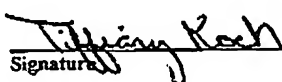
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This brief contains these items under the following headings, and in the order set forth below:

- I. REAL PARTY IN INTEREST
- II. RELATED APPEALS AND INTERFERENCES
- III. STATUS OF CLAIMS
- IV. STATUS OF AMENDMENTS
- V. SUMMARY OF CLAIMED SUBJECT MATTER
- VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
- VII. ARGUMENT
- VIII. CLAIMS APPENDIX
- IX. EVIDENCE APPENDIX
- X. RELATED PROCEEDINGS APPENDIX

I. REAL PARTY IN INTEREST

The real party in interest in this Appeal is David M. Prokop.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this Appeal.

III. STATUS OF CLAIMS

The status of the claims in this application is:

<u>Claim</u>	<u>Status</u>
1. (Previously presented)	Independent.
2. (Previously presented)	Depends from claim 1.
3. (Previously presented)	Depends from claim 2.
4. (Previously presented)	Depends from claim 3.
5. (Previously presented)	Depends from claim 3.
6. (Previously presented)	Depends from claim 5.
7. (Previously presented)	Depends from claim 6.
8. (Previously presented)	Independent.
9. (Previously presented)	Depends from claim 8.
10. (Previously presented)	Depends from claim 9.
11. (Previously presented)	Depends from claim 10.
12. (Previously presented)	Depends from claim 10.
13. (Previously presented)	Depends from claim 12.

14. (Previously presented)	Depends from claim 13.
15. (Previously presented)	Independent.
16. (Previously presented)	Depends from claim 15.
17. (Previously presented)	Depends from claim 16.
18. (Previously presented)	Depends from claim 17.
19. (Previously presented)	Depends from claim 17.
20. (Previously presented)	Depends from claim 19.
21. (Previously presented)	Depends from claim 20.

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application: 1-21

B. STATUS OF ALL THE CLAIMS

1. Claims canceled: None.
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-21
4. Claims allowed: None
5. Claims rejected: 1-21
6. Claims objected to: None

C. CLAIMS ON APPEAL

Claims now on appeal: 1-21

IV. STATUS OF AMENDMENTS

Post-final amendments were submitted in a Response filed June 21, 2006. These amendments have been entered. An additional clarifying amendment will be submitted in the future to FIGS. 4-6 to change "70" to "72," "72" to "74" and "74" to "76." The Applicant apologizes for this newly discovered error, and submits that correction of this error at this time is not necessary for full consideration of the issues presented in this Brief.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The embodiments of the present invention as recited by the language of independent claims 1, 8 and 15 are generally directed to an apparatus for cutting.

Independent claim 1 generally features an ergonomic handle (such as 16 in FIGS. 1-7 and in the specification at page 6, line 21 to page 7, line 7) comprising: a main body portion (such as 30; see FIGS. 1-7 and in the specification at page 7, line 1); and an appendage support member (such as 32; see FIGS. 1-9 and page 7, lines 21-23) projecting laterally from the main body portion (such as shown in FIGS. 4-5), the appendage support member comprising a top surface (such as support surface 52 in FIGS. 1 and 6 and page 8, lines 12-15) that provides a concave recess (such as recess 50 in FIGS. 4-5 and page 8, lines 12-18) wherein a principle axis (such as 76 in FIG. 5 [mismarked as 74] and new paragraph added at page 9, line 21) of the concave recess passing through a center of curvature (such as 74 in FIG. 5 [mismarked as 72] and new paragraph added at page 9, line 21) and a vertex (such as 72 in FIG. 6 [mismarked as 70] and new paragraph added at page 9, line 21) of the concave recess is substantially perpendicular to and offset from a centerline (such as 54 in FIGS. 4 and 5, and in new paragraph added at page 9, line 21) of the main body portion, and a substantially continuous convex shaped bottom surface (unnumbered lower surface of support member 32; see FIGS. 4-5 and 7) to provide an ergonomic support surface for an appendage of a user (see FIG. 9).

Independent claim 8 generally features a knife (such as 10 in FIG. 1) comprising a blade member (such as 12 in FIGS. 1-4, 6-9 and page 6, lines 19-21) having a cutting edge (such as 14 in FIGS. 1-3, 9 and page 7, lines 16-20); and a handle (such as 16 in FIGS. 1-7 and page 6, line 19 to page 7, line 2) comprising a main body portion (such as portion 30

with blade end 20 in FIGS. 1-3 and page 7, lines 1-2); and an appendage support member (such as 32 in FIGS. 1-9 and page 7, lines 21-23) projecting laterally from the main body portion, the appendage support member comprising a top surface (such as support surface 52 in FIGS. 1 and 6 and page 8, lines 12-15) that includes a concave recess (such as recess 50 in FIGS. 4-5 and page 8, lines 12-18) wherein a principle axis (such as 76 in FIG. 5 and new paragraph added at page 9, line 21) of the concave recess passing through a center of curvature (such as 74 in FIG. 5 and new paragraph added at page 9, line 21) and a vertex (such as 72 in FIG. 6 and new paragraph added at page 9, line 21) of the concave recess is substantially perpendicular to and offset from a centerline (such as 54 in FIGS. 4 and 5, and in new paragraph added at page 9, line 21) of the main body portion, and a substantially continuous convex shaped bottom surface (unnumbered lower surface of support member 32; see FIGS. 4-5 and 7) configured to provide an ergonomic support surface for an appendage of a user (see FIG. 9).

Independent claim 15 generally features a hand implement comprising an tool member (such as 10 in FIG. 1) for performing the particular function of the implement; and a handle (such as 16 in FIGS. 1-7 and page 6, line 19 to page 7, line 2) comprising a main body portion (such as portion 30 with blade end 20 in FIGS. 1-3 and page 7, lines 1-2); and an appendage support member (such as 32 in FIGS. 1-9 and page 7, lines 21-23) projecting laterally from the main body portion, the appendage support member comprising a top surface (such as support surface 52 in FIGS. 1 and 6 and page 8, lines 12-15) with a concave cavity (such as recess 50 in FIGS. 4-5 and page 8, lines 12-18) wherein a principle axis (such as 76 in FIG. 5 and new paragraph added at page 9, line 21) of the concave cavity passing through a center of curvature (such as 74 in FIG. 5 and new paragraph added at page 9, line

21) and a vertex (such as 72 in FIG. 6 and new paragraph added at page 9, line 21) of the concave cavity is substantially perpendicular to and offset from a centerline (such as 54 in FIGS. 4 and 5, and in new paragraph added at page 9, line 21) of the main body portion, and a substantially continuous convex shaped bottom surface (unnumbered lower surface of support member 32; see FIGS. 4-5 and 7) configured to provide an ergonomic support surface for an appendage of a user (see FIG. 9).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. The first grounds of rejection to be reviewed on appeal is the final rejection of claims 1-6 and 15-20 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,692,245 to Dalury ("Dalury '245");
2. The second grounds of rejection to be reviewed on appeal is the final rejection of claims 7 and 21 under 35 U.S.C. §103(a) as being obvious over Dalury '245; and
3. The third grounds of rejection to be reviewed on appeal is the final rejection of claims 8-14 under 35 U.S.C. §103(a) as being obvious over Dalury '245 in view of U.S. Patent No. 6,502,314 to McCatty ("McCatty '314").

The claims do not stand or fall together, but rather will be argued separately in accordance with the foregoing groupings.

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VII. ARGUMENT

A. PATENTABILITY OF FIRST GROUP OF CLAIMS 1-6 and 15-20

Independent claim 1 generally features "an ergonomic handle comprising: a main body portion; and an appendage support member projecting laterally from the main body portion, the appendage support member comprising a top surface that provides a concave recess wherein a principle axis of the concave recess passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body portion, and a substantially continuous convex shaped bottom surface configured to provide an ergonomic support surface for an appendage of a user."

The Applicant respectfully submits that the rejection of claim 1 is improper including on the bases that (1) the Examiner has failed to account for all of the limitations of the claim, and (2) the Examiner has improperly relied on drawings from the art of record to establish the rejection. Each of these points will be discussed in turn.

1. The Examiner has failed to show how that each of the limitations of claim 1 are present in Dalury '265

In order to establish a *prima facie* case of anticipation under §102, each limitation of the claim must be found to be identically arranged in a single prior art reference, either explicitly or via inherency. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990); MPEP 2131. A limitation is "inherently" present only if the skilled artisan would "necessarily" find it present in the cited reference. *Continental Can v. Monsanto*, 20 USPQ2d 1746 (Fed. Cir. 1991); MPEP 2112.

As previously discussed in the Applicant's Response to final Office Action filed June 21, 2006, Dalury '265 at least fails to disclose an appendage support member with "*a principle axis of the concave recess passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body portion,*" as claimed by claim 1. Rather, it can be clearly seen that the principle axis and vertex of Dalury '265 are non-perpendicular to the centerline of the handle of Dalury '265. See 6/21/06 Response, pages 9-10; and Dalury '265, FIG. 5 and col. 5, lines 55-59.

Moreover, Dalury '265 at least fails to disclose the appendage support member with "*a substantially continuous convex shaped bottom surface configured to provide an ergonomic support surface for an appendage of a user,*" as claimed by claim 1. Rather, it can be clearly seen that Dalury '265 discloses a concave shaped bottom surface on the recited appendage support member. See 6/21/06 Response, page 11; and Dalury '265, FIGS. 3-5. Indeed, at col. 5, lines 45-51, Dalury '265 expressly states that the handle shape can be created by the user squeezing a soft material; the skilled artisan would clearly understand that such operation would result in a concave shaped bottom surface as exactly shown in the figures of Dalury '265, and not a convex surface as claimed.

Reconsideration and allowance of the claims are therefore requested on these bases.

It is further noted that after pointing out these deficiencies to the Examiner and requesting further clarification as to the basis for the anticipation rejection, the Advisory Action mailed July 18, 2006 merely stated, "*it is still believed that each limitation of the claims reads on the device of Dalury. Applicant has not sufficiently limited his invention to overcome the applied art of record.*" Advisory Action, p. 2, lines 2-4.

This is insufficient to establish a *prima facie* case of anticipation. The Examiner has yet to provide a reasoned showing of how that each and every limitation of the invention as claimed is identically arranged in the Dalury '265 reference, either explicitly or inherently. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990). At this point it is impossible to determine from the record what elements of Dalury '265 are viewed as meeting the language "as claimed," and whether the Examiner is using inherency as a portion of the basis for this rejection.

All that is known is that the Examiner thinks that the drawings in Dalury '265 "look like" the invention "as claimed." This is insufficient to establish a *prima facie* case of anticipation and constitutes reversible error. Reconsideration and allowance of the rejected claims are further requested on this basis as well.

2. The Examiner has improperly relied upon the drawings in Dalury '265 to establish the rejection without regard to the associated disclosure in the specification

It is well settled that anticipation of claim terms cannot be shown by interpreting patent drawings in such a way as to contradict the associated disclosure in the specification. *Nystrom v. TREX Co.*, 76 USPQ2d 1481 (Fed Cir. 2005) (reversible error to base an anticipation finding on patent drawings not explicitly made to scale); *Hockerson-Halberstadt Inc. v. Avia Group International Inc.*, 222 F.3d 951 (Fed. Cir. 2000) (patent drawings may not be relied on to disclose particular features if the specification does not support this interpretation); *In re Wright*, 569 F.2d 1124, 1127 (CCPA 1977)(assertions based on dimensional orientations of a prior art drawing "are of little value" absent corresponding disclosure in the specification that supports such assertions).

As previously discussed in the Arguments provided in support of the Pre-Appeal Brief Request for Review filed September 22, 2006, the specification in Dalury '265 explicitly describes a number of features of the ergonomic handle 1 represented in FIGS. 1, 3 and 4 which must be taken into account when viewing FIGS. 1, 3 and 4 of Dalury '265.

The handle 1 is described as being "sufficiently close in shape to a conventional handle" so that extensive retraining of a user familiar with conventional grips "is not necessary." Col. 2, lines 57-61; col. 7, lines 35-41. The handle 1 is described as aligning the thumb along the "long axis of the implement." Col. 3, lines 59-61. The shape of the handle 1 is specifically obtained by a user gripping a soft medium such as clay or a thermoplastic material and using the resulting imprint as the surface of the handle 1. Col. 5, lines 45-51; col. 7, lines 17-24.

In view of these characterizations by Dalury '265 of the drawings, it is clear that the invention "as claimed" is significantly different from the structure represented in FIGS. 1, 3 and 4. The invention "as claimed" is NOT sufficiently close to conventional grips to eliminate the need to retrain users. The invention "as claimed" does NOT align the thumb along the long axis of the implement. The invention "as claimed" could NOT be formed by a user squeezing a soft medium as disclosed by Dalury '265.

The Examiner has therefore established the rejection on an improper, and impermissible construction of the drawings that directly contradicts the specification of Dalury '265. This constitutes clear reversible error, and reconsideration and allowance of the claims are accordingly solicited on this basis as well.

For the foregoing reasons, the Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of anticipation of claims 1-6 and 15-20.

B. PATENTABILITY OF SECOND GROUP OF CLAIMS 7 AND 21

While dependent claims 7 and 21 are believed patentable as depending from respective base claims patentable for the foregoing reasons, the separate patentability of these claims will now be presented.

Dependent claim 7 generally recites "*the handle as claimed in claim 6 wherein the main body portion comprises a first thin portion near a proximal end of said handle, a second thin portion near a distal end of said handle, and a broad portion between the first and second thin portions, and wherein the broad portion is thicker in cross section than the first and second thin portions, and further wherein the change in the cross sectional thickness between each of the portions is gradual.*"

Claims 7 and 21 were rejected on the basis that these claims provide features that would be so-called "obvious design choices." This is without merit because Dalury '265 directly teaches away from such "obvious design choices."

It is well settled that in an obviousness determination, the cited references must be reviewed "as a whole" including teachings that would lead the skilled artisan away from the claimed combination. *In re Zurko*, 59 USPQ2d 1693 (Fed. Cir. 2001). In the present case, the Examiner has asserted that the particular features of dependent claims 7 and 21 are non-functional and hence, would be obviously incorporated into the design of Dalury '265 for "aesthetic appeal." Final Office Action, p. 4, lines 15-22.

This is without merit. Dalury '265 clearly teaches that the handle 1 closely conforms to a user's "natural grip," and preferably provides about 50% more surface area contact as compared to a conventional cylindrical handle. Col. 4, lines 58-63; col. 5, lines 55-67. The surface configuration of the handle 1 is specifically tailored to match an individual user's gripping of a soft material. Col. 5, lines 45-51; col. 7, lines 17-24.

Under these circumstances, the skilled artisan would NOT be motivated to incorporate the features of claims 7 and 21 into the handle of Dalury '265 for "aesthetic appeal," since doing so would be directly contrary to and would defeat the advantages set forth by Dalury '265. See *In re Ratti*, 123 USPQ 349 (CCPA 1959)(if a proposed modification to a prior art reference suggested by the Examiner would alter the principle of operation taught by the prior art reference, such modification would not likely be made by the skilled artisan, thus resulting in a lack of motivation to modify/combine.); MPEP 2143.01.

Moreover, since the claimed subject matter is directed to "an ergonomic handle," the Examiner's blanket assertion that the recited features of claim 7 are "non-functional" is not supported by the claim language, or the associated specification. *Phillips v. AWH Corp*, 75 USPQ2d 1321 (Fed. Cir. 2005)(*en banc*); MPEP 2111.01.

For these reasons, the rejection of claims 7 and 21 is also improper and a *prima facie* case of obviousness has not been established for these claims.

C. PATENTABILITY OF THIRD GROUP OF CLAIMS 8-14

In order to establish a *prima facie* case of obviousness, all of the limitations of the claim must actually be taught or suggested by the cited references. See *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP 2143.03.

In the present case, the Examiner has failed to establish that the cited references teach or suggest the subject matter of independent claim 8, including “an appendage support member projecting laterally from the main body portion, the appendage support member comprising a top surface that includes a concave recess wherein a principle axis of the concave recess passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body portion, and a substantially continuous convex shaped bottom surface configured to provide an ergonomic support surface for an appendage of a user.”

Reference is made to the deficiencies of Dalury '265 set forth above (and for brevity will not be repeated here). McCatty '314 merely teaches a handle 14 having a side face 36 with concave thumb recess 44, and therefore fails to make up for these deficiencies of Dalury '265. See McCatty '314, FIGS. 1, 4, 8-9 and col. 4, lines 1-10.

As noted above, the Examiner has merely concluded that the handle 1 in Dalury '265 appears to “look like” the invention “as claimed” without regard to the actual teachings and suggestions of the reference. This is insufficient to establish a *prima facie* case of obviousness under §103(a).

Moreover, one skilled in the art would not be motivated to modify Dalury '265 in combination with McCatty '314 to arrive at the claimed combination. Under no reasonable scenario could a user's squeezing of a compliant material in a “natural grip” as taught by

Dalury '265 teach or suggest the laterally extending appendage support member recited by claim 8, particularly when McCarty '314 also fails to teach this feature. Similarly, the "aligned thumb" orientation and the advantage of "no retraining of a user" required by 'Dalury '265 directly teach away from the laterally extending appendage support member recited by claim 8.

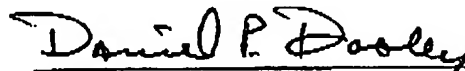
Accordingly, the obviousness rejection of claims 8-14 is improper on the basis that the cited references fail to teach or suggest all the limitations of claim 8, as well as on the basis that there is nothing that would fairly motivate the skilled artisan to arrive at the claimed subject matter from these references.

Conclusion

For the foregoing reasons, it is believed that rejected claims 1-21 stand patentably distinct over the cited references. Reconsideration and passage to allowance of all claims 1-21 are respectfully solicited.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. (Currently amended) An ergonomic handle comprising:
a main body portion; and
an appendage support member projecting laterally from the main body portion, the
appendage support member comprising a top surface that provides a concave
recess wherein a principle axis of the concave recess passing through a center
of curvature and a vertex of the concave recess is substantially perpendicular
to and offset from a centerline of the main body portion, and a substantially
continuous convex shaped bottom surface configured to provide an ergonomic
support surface for an appendage of a user.
2. (Previously presented) The handle as claimed in claim 1 wherein the appendage
support member accommodates an ergonomic placement of both a distal portion of a first
appendage of a hand of the user adjacent the concave recess of the top surface of the
appendage support member and a distal portion of a second appendage of the hand of the
user adjacent the substantially continuous convex bottom surface of the appendage support
member, wherein upon a grasping of the main body portion by the user, the distal portions of
the user's first and second appendages are supported by the appendage support member and
are fully offset from the centerline of the main body portion.
3. (Previously presented) The handle as claimed in claim 2 wherein the first
appendage is a thumb on the hand of the user.
4. (Previously presented) The handle as claimed in claim 3 wherein the second
appendage is an index finger on the hand of the user.
5. (Previously presented) The handle as claimed in claim 3 wherein the concave
recess comprises a support surface and peripheral wall portions for accommodating and
locating the user's thumb, the peripheral wall portions providing resistance to sliding
movement of the thumb relative to the support member.

6. (Previously presented) The handle as claimed in claim 5 wherein the concave recess is dimensioned to accommodate the thumb of a user.

7. (Previously presented) The handle as claimed in claim 6 wherein the main body portion comprises a first thin portion near a proximal end of said handle, a second thin portion near a distal end of said handle, and a broad portion between the first and second thin portions, and wherein the broad portion is thicker in cross section than the first and second thin portions, and further wherein the change in the cross sectional thickness between each of the portions is gradual.

8. (Previously presented) A knife comprising:

- a blade member having a cutting edge; and

- a handle comprising:

- a main body portion; and

- an appendage support member projecting laterally from the main body portion, the appendage support member comprising a top surface that includes a concave recess wherein a principle axis of the concave recess passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body portion, and a substantially continuous convex shaped bottom surface configured to provide an ergonomic support surface for an appendage of a user.

9. (Previously presented) The knife as claimed in claim 8 wherein the appendage support member accommodates an ergonomic placement of both a distal portion of a first appendage of a hand of the user adjacent the concave recess of the top surface of the appendage support member and a distal portion of a second appendage of the hand of the user adjacent the substantially continuous convex shaped bottom surface of the appendage support member, wherein upon a grasping of the main body portion by the user, the distal

portions of the user's first and second appendages are supported by the appendage support member and are fully offset from the centerline of the main body portion.

10. (Previously presented) The knife as claimed in claim 9 wherein the first appendage is a thumb on the hand of the user.

11. (Previously presented) The knife as claimed in claim 10 wherein the second appendage is an index finger on the hand of the user.

12. (Previously presented) The knife as claimed in claim 10 wherein the concave recess comprises a support surface and peripheral wall portions for accommodating and locating the user's thumb, the peripheral wall portions providing resistance to sliding movement of the thumb relative to the support member.

13. (Previously presented) The knife as claimed in claim 12 wherein the concave recess is dimensioned to accommodate the thumb of an average adult.

14. (Previously presented) The knife as claimed in claim 13 wherein the main body portion comprises a first thin portion near a proximal end of said handle, a second thin portion near a distal end of said handle, and a broad portion between the first and second thin portions, and wherein the broad portion is thicker in cross section than the first and second thin portions, and further wherein the change in the cross sectional thickness between each of the portions is gradual.

15. (Previously presented) A hand implement comprising:

an tool member for performing the particular function of the implement; and

a handle comprising:

a main body portion; and

an appendage support member projecting laterally from the main body portion, the appendage support member comprising a top surface with a concave cavity wherein a principle axis of the

concave cavity passing through a center of curvature and a vertex of the concave cavity is substantially perpendicular to and offset from a centerline of the main body portion, and a substantially continuous convex shaped bottom surface configured to provide an ergonomic support surface for an appendage of a user.

16. (Previously presented) The hand implement as claimed in claim 15 wherein the appendage support member accommodates an ergonomic placement of both a distal portion of a first appendage of a hand of the user adjacent the concave cavity of the top surface of the appendage support member and a distal portion of a second appendage of the hand of the user adjacent the substantially continuous convex shaped bottom surface of the appendage support member, wherein upon a grasping of the main body portion by the user, the distal portions of the user's first and second appendages are supported by the appendage support member and are fully offset from the centerline of the main body portion.

17. (Previously presented) The hand implement as claimed in claim 16 wherein the first appendage is a thumb on the hand of the user.

18. (Previously presented) The hand implement as claimed in claim 17 wherein the second appendage is an index finger on the hand of the user.

19. (Previously presented) The hand implement as claimed in claim 17 wherein the concave cavity comprises a support surface and peripheral wall portions for accommodating and locating the user's thumb, the peripheral wall portions providing resistance to sliding movement of the thumb relative to the support member.

20. (Previously presented) The hand implement as claimed in claim 19 wherein the concave cavity is dimensioned to accommodate the thumb of a user.

21. (Previously presented) The hand implement as claimed in claim 20 wherein the main body portion comprises a first thin portion near a proximal end of said handle, a second thin portion near a distal end of said handle, and a broad portion between the first and second thin portions, and wherein the broad portion is thicker in cross section than the first and second thin portions, and further wherein the change in the cross sectional thickness between each of the portions is gradual.

IX. EVIDENCE APPENDIX

No additional evidence is included.

X. RELATED PROCEEDINGS APPENDIX

There exist no relevant related proceedings concerning this Appeal before the Board.